

## SECOND DIVISION

[ G.R. No. 145466, July 07, 2004 ]

**ZAMBOANGA BARTER GOODS RETAILERS ASSOCIATION, INC. [ZAMBAGORA], REPRESENTED BY ITS PRESIDENT, HADJI MAHMUD GUMAMPANG, PETITIONER, VS. HON. MARIA CLARA L. LOBREGAT[\*] IN HER CAPACITY AS MAYOR OF ZAMBOANGA CITY AND HON. ERNESTO R. GUTIERREZ, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 14, ZAMBOANGA CITY, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court seeking to annul and set aside the Order<sup>[1]</sup> of the Regional Trial Court of Zamboanga City, Branch 14, in Civil Case No. 5093 denying the application for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction of petitioner Zamboanga Barter Goods Retailers Association, Inc. and its Order denying the motion for reconsideration thereon.

The petition at bar arose from the following antecedents:

The petitioner is a corporation duly organized and established under Philippine laws and has two hundred eighty-eight (288) barter-traders as members. Sometime in 1994, the respondent city government of Zamboanga allowed the members of the petitioner to temporarily occupy a reclaimed area located at P. Lorenzo St., Port Area, Barangay Zone 4. The members of the petitioner proceeded to construct their respective stalls on the property, and sold their wares therein. On July 10, 1994, a fire gutted most of the said stalls.

On July 26, 1994, the city building officials of Zamboanga issued a building permit for the construction of a one-storey building on the reclaimed area right behind the city hall. The petitioner paid monthly rentals thereon, and its members occupied the building and sold their wares therein. The petitioner, likewise, declared the building for taxation purposes the following year at the assessment value of P1,591,100.00,<sup>[2]</sup> and thereafter paid realty taxes on the said improvements.

In 1998, the respondent decided to construct the city fire station on the property occupied by the petitioner, and requested the latter to vacate the property. Upon representations made by some members of the *Sangguniang Panlungsod*, the respondent city granted several extensions to the petitioner to look for a new site for its building and vacate the property. However, despite such extensions granted to it, the petitioner failed to vacate the property.

On October 18, 2000, Mayor Maria Clara L. Lobregat sent a letter to the petitioner,

through its president, Hadji Gumampang, giving it a last extension, or until October 31, 2000, in view of the urgency of the construction of the city fire station.

The petitioner, through counsel, sent a Letter<sup>[3]</sup> dated October 19, 2000, to Mayor Lobregat stating that before it complied with such demand to vacate, it must first be adequately compensated for the value of the building and the other improvements it constructed on the subject property. The respondent city government took no action on the letter, and the petitioner's request for an audience with Mayor Lobregat or her representative to determine a just compensation for said improvements, likewise, failed to materialize.

On October 25, 2000, the petitioner filed its complaint with the Regional Trial Court of Zamboanga City, Branch 14, against the respondent for injunction with prayer for issuance of preliminary injunction and/or temporary restraining order to enjoin the city government from evicting them from the property. The case was docketed as Civil Case No. 5093. The petitioner alleged, *inter alia*, the following in its complaint:

10. That ousting the plaintiff from the present area in the absence of the settlement of claims over their rights to said improvements consisting of buildings and in view of the unavailability of alternative site where they could transfer their business would greatly work grave injustice and irreparable damages not only to their business and the individual member (sic) of the Association but to the members of their respective family (sic) as well who depend for (sic) them for support;
11. That in view of the refusal of the defendant to compensate the plaintiff for the improvements introduced and its eagerness to demolish the improvements belonging to the plaintiff and/or padlock the premises, there is a need to issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining the defendant to cease and desist from threatening, or doing acts which may probably be in violation of the rights of the herein plaintiff and further direct the defendant to maintain the *status quo* pending the resolution of the instant case, and for this purpose hereby offer a bond in such sum as this Honorable Court may fix.<sup>[4]</sup>

...

WHEREFORE, premises considered, plaintiff most respectfully pray (sic) of this Honorable Court that upon the filing hereof, a Temporary Restraining Order and/or Writ of Preliminary Injunction be immediately issued enjoining the defendant, its agent or representative, to refrain and desist from threatening or doing acts which may be in violation of the rights of the herein plaintiff and that after trial said Writ of Preliminary Injunction be made permanent.

Plaintiff pray[s] for other relief just and equitable under the circumstances.<sup>[5]</sup>

The complaint and summons were served on the respondent, and the case was set for hearing on the application for a temporary restraining order and/or writ of preliminary injunction on October 25, 2000. During the hearing, the petitioner presented its documentary evidence<sup>[6]</sup> showing that it had paid its quarterly fees for retailing business permits effective until December 31, 2000, as well as garbage fees and other surcharges and interests. The petitioner, likewise, presented an official receipt showing its payment of the real estate tax on March 31, 2000.<sup>[7]</sup>

On October 26, 2000, the trial court<sup>[8]</sup> issued its assailed Order denying the petitioner's application for a temporary restraining order or a writ of preliminary injunction. The court declared that the petitioner failed to establish a clear and unmistakable right for injunctive relief.<sup>[9]</sup>

The petitioner filed a motion for reconsideration of the Order but the trial court denied the same on October 30, 2000.<sup>[10]</sup> However, the trial court recommended to the respondent to let the petitioner stay in the subject premises until December 31, 2000, since it had already paid its business permit up to the said date.<sup>[11]</sup> The respondent agreed to the recommendation of the trial court.

However, on November 6, 2000, the petitioner filed the petition at bar, contending that:

1. THE COURT *A QUO* GRAVELY ABUSE[D] ITS DISCRETION WHEN IT OUTRIGHTLY DENIED THE PETITIONER'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER.<sup>[12]</sup>
2. THE COURT *A QUO* ERRED IN NOT CONSIDERING THE PETITIONER'S DOCUMENTARY EVIDENCE IN SUPPORT OF ITS APPLICATION FOR [A] TRO DURING THE SUMMARY HEARING CONDUCTED FOR THE PURPOSE.<sup>[13]</sup>

The petitioner asserts that it had been issued a business permit after the payment of the necessary fees effective up to December 31, 2000 and that the respondent had no right to evict its members from the property until such date. Hence, the petitioner avers, the trial court should have issued a temporary restraining order or a writ of preliminary prohibitory injunction enjoining the respondent from evicting its members from the property. The petitioner argues that its right to stay in the property is buttressed by its documentary evidence that it had paid the real estate taxes due.

In its Comment<sup>[14]</sup> on the petition, the respondent contends that the assailed order, even if erroneous, is merely an error of judgment not correctable by certiorari. It asserts that it acquiesced to the recommendation of the trial court, and allowed the petitioner to stay and carry on its business in the subject premises until December 31, 2000; and yet, the petitioner still filed its petition with this Court on November 6, 2000. The respondent also avers that it needs the property for the construction of the city fire station, a public infrastructure property, the accomplishment of which cannot be enjoined under Presidential Decree No. 1818.

The petition is dismissed.